

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**LETTERS PATENT APPEAL No. 758 of 2005
with
CIVIL APPLICATION NO. 4918 of 2005
In
SPECIAL CIVIL APPLICATION No. 3735 of 1988**

For Approval and Signature:

**HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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KANUBHAI P SHAH - Appellant(s)

Versus

BANK OF BARODA, THRO' CHAIRMAN& MANAGING DIRECTOR & 3 - Respondent(s)

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Appearance :

MR KM PATEL for Appellant(s) : 1,
MR DARSHAN M PARIKH for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 3.
SERVED BY RPAD - (N) for Respondent(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL**

Date : 01/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1.Admit. Mr. Darshan Parikh waives Notice for the

respondents.

2. At the joint request of learned Counsel for the parties the matter is heard and disposed of by this order.

3. The appellant - petitioner was working as the Officer of the respondent Bank. He was served with charge-sheet dated 15.4.1985 (Annexure : A) along with the statement of allegations. There were in all 10 charges levelled against him. At the conclusion of the inquiry the Appellant - delinquent submitted his detailed reply dated 6.3.1986, running into about 33 typed pages, to the Inquiry Officer (Annexure : C). Shri B.H.Patel, Inquiry Officer immediately on the next day i.e. on 7.3.1986 submitted his Inquiry Report, running into 36 typed pages, and came to the conclusion on the basis of the evidence and the reply of the delinquent that out of 10 allegations, allegation Nos.2(1), 2(4) and 2(10) were not found to be proved and the allegations No.2(7), 2(8) and 2(9) were found to be partly proved, whereas remaining allegations were found to be fully proved against the delinquent (Annexure : D). Considering the Report of the Inquiry Officer Shri P.H.Dave, Deputy General Manager and Disciplinary Authority, carefully going through the

charges and the allegations levelled against the delinquent and the defence statement of the delinquent concurring with the Report of the Inquiry Officer, came to the conclusion that it was a fit case for imposing the penalty of dismissal from service. Therefore, in exercise of powers vested in him under Sub-Regulation No.5(3) read with Regulation Nos.4 & 7 of Bank of Baroda Officers Employees' (Discipline & Appeal) Regulations, 1976, he, by his order dated 25.5.1987, terminated the services of the appellant - delinquent by dismissing him from the Bank's service from the date of order (Annexure : E), against which Departmental Appeal was filed by the appellant - delinquent on 1.8.1987 (Annexure : E), running into about 46 typed pages, and prayed that the order of dismissal be quashed and set aside and in alternative it was prayed that the order of dismissal from service is very harsh, therefore, it may be suitably modified as the punishment of dismissal was highly disproportionate to the charges which were found to be proved against him during the inquiry (Annexure : F). Thereafter, by his registered letter dated 16.8.1987 (Annexure : G) he tried to raise some additional contentions in his Memo of Appeal dated 1.7.1987 wherein, for the first time,

he had also asked for an opportunity of personal hearing at his own cost.

4. Prior to it i.e. on 7.8.1987 the Appellate Authority had already decided his Appeal by an order dated 7.8.1987. There was no provision of submitting additional Memo of Appeal or Rejoinder under the Bank's regulation and in absence of any provision of review it was not possible for the Appellate Authority to review its decision dated 7.8.1987. Hence, without considering his additional Memo of Appeal or Rejoinder the appellant - delinquent was informed by letter dated 29.8.1987 that his Appeal was dismissed and returned the additional memo of Appeal or Rejoinder to the appellant - delinquent (Annexure : H). The Review Appeal dated 15.10.1987 (Annexure : J) was filed by the appellant - delinquent before the Reviewing Authority. However, the Reviewing Authority i.e. the Chairman and Managing Director of the respondent Bank of Baroda, by his order dated 15.12.1987, rejected his Review Petition (Annexure:K). Aggrieved of this, the appellant - petitioner approached this Court by way of a writ petition under Article 226 of the Constitution i.e. Special Civil Application No.3735 of 1988. Initially, the learned Single Judge of this Court allowed the said

writ petition only on the short ground of non-supply of the Report of the Inquiry Officer to the appellant - delinquent in passing the impugned order of dismissal, which was set aside by the Division Bench of this Court in LPA, filed by the respondent - Bank and the matter was remitted to the learned Single Judge for deciding the same on other points. Accordingly, it was heard by another learned Single Judge (Coram : Ms.R.M.Doshit, J.) and after hearing the learned Counsel for the parties the learned Single Judge has dismissed the writ petition with a direction to the petitioner to remit the amount of Rs.1 lac and any other amount received by him by way of subsistence allowance from 1st April 1992 under the order dated 10th July, 1992, passed by the Division bench of this Court, to the Bank of Baroda on or before 28th February, 2005, failing which the Bank was permitted to recover the said amount from the petitioner with 6 % interest on it. Hence, this Letters Patent Appeal.

5.Learned Counsel Shri Patel for the appellant vehemently submitted that the Inquiry Officer was bias against the appellant - delinquent and, therefore, though the appellant - petitioner submitted his written argument, running into about 33 typed pages, immediately on the

next day i.e on 7.8.1987 the inquiry Officer submitted his Report against the appellant - delinquent, running into 35 typed pages. Therefore, the whole inquiry was vitiated. He, therefore, submitted that all the subsequent orders passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority, on the basis of the Report of the Inquiry Officer, were also vitiated. There is no substance in this submission of Shri Patel. Except the bare allegations against the Inquiry Officer there is nothing on record to justify the same. Normally the allegations are made of delay and latches on the part of the Authority in not passing the order immediately, whereas, in the instant case, the Inquiry Officer was so vigilant that he submitted his Report, running into 35 pages, immediately on the next day and, therefore, on this ground the Appeal is being made to find fault with him. There are good officers also who can, without wasting any time, passed the order immediately.

6. Shri Patel then submitted that the Disciplinary Authority committed grave error in dismissing the Appellant - delinquent from service while concurring with the Report of the Inquiry Officer. He submitted that the Disciplinary Authority has clearly stated in

his order dated 25.5.1987 (Annexure : E) that Inquiry Officer has held in his Report that charges levelled against the petitioner proved, whereas in fact as stated earlier the Inquiry Officer himself has found, at least, three allegations not proved against the delinquent. Thus, there was non-application of mind on the part of the Disciplinary Authority while passing the dismissal order, therefore, it may be quashed and set aside. At first look this argument of Shri Patel found to be attractive, but, on closure scrutiny, the order of dismissal (Annexure ; E) passed by the Disciplinary Authority, it is found to be without any substance. The Disciplinary Authority has clearly stated that all the serious charges levelled against the delinquent - appellant were found to be proved. We have to read the order of the Disciplinary Authority as a whole, we cannot pick up one or two sentences from the order. It is clear from Para : 4 of the order passed by the Disciplinary Authority (Annexure:E) that after considering the nature of the charges, allegations and the Inquiry Report, the Disciplinary Authority agreeing with the Report of the Inquiry Officer thought it fit to exercise his powers vested in him under Sub Regulation : 5(3) read with Regulation 4

& 7 of the Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations, 1976, to dismiss the appellant - delinquent from service. Having carefully gone through the Report of the Inquiry Officer it is clear that most of the serious charges levelled against the appellant - delinquent were found to be proved by the Inquiry Officer.

7. Shri Patel then submitted that the Appellate Authority committed grave error in not considering his additional memo of Appeal under the guise that there is no provision of review when his Appeal was already dismissed prior to receipt of the additional memo of Appeal. Thus, the impugned order is in violation of principles of natural justice. He has also gone to the extent of submitting that the order of dismissing the Appeal was back dated. He submitted that when the appellant - delinquent was able to make out a strong case in his favour in Appeal by way of additional memo, therefore, his memo of Appeal could not have been returned on the ground that there is no provision of submitting such additional Memo of Appeal and that once the order is passed by the Appellate Authority then it cannot be reviewed. There is no substance in this submission that the Appellate Authority had passed the

back dated order. The Appellate Authority had passed the order on 7.8.1987 before the additional memo of Appeal or Rejoinder dated 16.8.1987 was received and in absence of any solid proof we are not prepared to believe that the Appellate Authority had passed the back dated order. Once the order is passed then, in absence of provision of review, it was not open to the Authority to reconsider and review his own decision.

8. In any case from the impugned order passed by the Appellate Authority in Appeal we are fully satisfied that no error was committed by the Appellate Authority while dismissing the appeal.

9. It was submitted by Shri Patel that the Appellate Authority has stated in his order that it was not possible for him to re-appreciate all the evidence on record in his order. Picking up few words from the order would not help the appellant. If we read the Appellate order as a whole then it is clear that the Appellate Authority has clearly stated in his impugned order at Annexure : H that **... "the very fact that the Inquiry Officer himself has held several allegations not proved would itself show that the Inquiry Officer has made a thorough analysis of the evidence on record and has adequately applied his mind to the evidence on**

record and has adequately applied his mind to the materials before him to come to the conclusion to which he ultimately did. The evidence on record does show that the appellant was indulging in dishonest transactions and that the appellant was making personal gains by misusing his position in the Bank. His accounts have reflecting several personal financial dealings with constituents of the Bank and there is also evidence to show that there are several transactions revealing a disproportionate nature of assets of the appellant as compared to his known sources of income."

10. In case of NATIONAL FERTILIZERS LTD. V/s. P.K.KHANNA, reported in (2005) 7 SCC 597, considering its previous Judgment the Hon'ble Apex Court has clearly held that *...when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings."* In view of this direct Judgment of the Hon'ble Supreme Court this contention of Shri Patel is also rejected.

11. Shri Patel then submitted that Reviewing Authority has committed serious error in observing in his order while dismissing the Review Application of the appellant – delinquent that there was likelihood of Bank suffering substantial loss of recovery, though the Inquiry Officer himself in his Report held that charge as is not proved. There is no substance in this submission. We have to see that in what context the allegation No.10 was levelled and in what context the Reviewing Authority has observed while dismissing the Application has ordered that there was no substance in the allegation that there was likelihood of the Bank suffering substantial loss in the matter of recovery. In such type of cases the Bank has to suffer loss in the matter of recovery. On such ground the order of dismissal cannot be quashed by this Court, more particularly when the learned Single Judge has refused to exercise her extra-ordinary jurisdiction under Art. 226 of the Constitution.

12. Last contention raised by Shri Patel was that though the specific request was made for personal hearing in Appeal, the same was not granted by the Appellate Authority, therefore, appellate order is vitiated. There was no provision of personal hearing, therefore,

the Appellate Authority rightly not granted such request of the appellant. It may be stated that initially, when the appellant has filed Memo of Appeal no such prayer was made. But, such a prayer was made in the additional memo of Appeal by that time the order was already passed.

13. Before parting, we may say that Shri Patel had half heartedly raised the contention regarding disproportionate of punishment. It was submitted that penalty of dismissal was very harsh. Instead of dismissing the appellant - delinquent from service any other major penalty of stoppage of increment with future effect could have been passed. Looking to the seriousness of charges levelled against the appellant delinquent found to be proved, we are of the considered opinion that except the order of dismissal no other order could have been passed in the facts and circumstances of the case.

14. In view of the above discussion this Appeal fails and is hereby dismissed as we are in complete agreement with the reasoning assigned by the learned Single Judge. The appellant shall now comply with the direction issued by the learned Single Judge in her order.

Civil Application No.4918 of 2005 (for stay) is dismissed as the main Appeal is dismissed.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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